California, were joint owners of a thoroughbred stallion. The defendant had the possession and use of the stallion in California during the seasons of 1919 and 1920 under an agreement whereby the plaintiff was to have him for use in Kentucky during the seasons of 1921 and 1922. To have become acclimated and fit for the season of 1921 the stallion should have been shipped to Kentucky by September, 1920, but the defendant refused to ship him. At the opening of the 1921 season the plaintiff sued in New York, praying a mandatory injunction ordering the defendant to ship the stallion to Kentucky, and the appointment of a receiver with power to proceed to California to get the stallion. The defendant was personally served with process in New York and appeared by attorney. *Held*, that the prayer be granted. *Madden* v. *Rosseter*, 114 Misc. 416, 187 N. Y. Supp. 462, aff'd, 187 N. Y. Supp. 943 (App. Div.).

For a discussion of the principles involved, see NOTES, *supra*, p. 610.

EXTRADITION — RIGHT TO TRY MAN MISTAKENLY SEIZED BY ARMY ON BANDIT HUNT. — A troop of cavalry under orders from the War Department crossed the Mexican border on a "hot trail" after bandits. They seized the defendant, mistaking him for a bandit, and brought him back to the United States. It appeared that the procedure was not within any rights conferred by the existing treaty with Mexico providing for the extradition of fugitives from justice. The mistake discovered, the defendant was released by the army but was immediately seized, by virtue of a prior arrangement, by Texas rangers, and was indicted for a murder previously committed in Texas. His plea to the jurisdiction was overruled. He was convicted, and appealed. *Held*, that the conviction be reversed. *Dominguez* v. *State*, 234 S. W. 79 (Tex. Cr. App.).

Apart from treaty, the obligation of one nation to another to surrender a fugitive from justice is an imperfect one, resting on comity. See WHEATON, INTERNATIONAL LAW, Dana's ed., § 115. If surrendered, the fugitive may be tried only for the specific offense he was surrendered to answer for, the limitation being implied as a condition imposed by the surrendering sovereign. See *United States* v. *Rauscher*, 119 U. S. 407, 416. International good faith requires the recognition of the limitation. *Ex Parte Brown*, 148 Fed. 68 (2d Circ.); *Ex. Parte Coy*, 32 Fed. 911 (5th Circ.). But where the seizure is not made under any privilege granted by the foreign sovereign there is no such limitation; and the fugitive may be tried for any and all offenses. *Ker* v. *Illinois*, 119 U. S. 436. In the absence of proof to the contrary, the interest in maintaining international good will should lead the court to assume, as was done in the principal case, that a seizure ordered by the government was authorized by the foreign sovereign, and to respect the limitation which would be imposed if it were. It follows that an actual bandit, seized by the expedition, could not have been tried for another offense. In this case there is a further difficulty, that the defendant, not being a bandit, was not within the express terms of the assumed authority. But since his capture was in the course of a *bona fide* attempt to execute the authority, it seems that neither Mexico's right nor his should be abridged by the mistake.

FEDERAL COURTS — RELATION TO STATE COURTS — WHETHER REVIEW SHOULD BE HAD BY WRIT OF ERROR OR BY *CERTIORARI* — VALIDITY OF STATE STATUTE "DRAWN IN QUESTION." — A Kentucky statute required foreign corporations to comply with certain formalities before doing business within the state. (1915 KY. STATS., § 571.) This statute had always been construed by the Kentucky courts as applying only to intrastate commerce. Without complying with the statute, the plaintiff, a foreign corporation, ordered wheat from the defendant to be delivered in Kentucky on board freight cars. The Kentucky Court of Appeals admitted that if this constituted interstate commerce the statute could not constitutionally be applied; but held that it

constituted intrastate commerce, and denied the plaintiff recovery on the contract because the statute had not been complied with. The plaintiff, contending that it was engaged in interstate commerce, took the case to the United States Supreme Court on writ of error. "A final judgment . . . in the highest court of a State . . . where is drawn in question the validity of a statute of . . . any State, on the ground of . . . being repugnant to the Constitution . . . of the United States, and the decision is in favor of . . . validity, may be reëxamined . . . in the Supreme Court upon a writ of error" (which must be granted as of right); whereas "it shall be competent for the Supreme Court, by certiorari" (the granting of which is within the discretion of the Supreme Court) " . . . to require that there be certified to it for review . . . any cause . . . where any title, right, privilege, or immunity is claimed under the Constitution." (39 STAT. AT L. 726, amending JUDICIAL CODE, § 237; BARNES' FED. CODE, § 1002.) *Held*, that the case is properly before the court on writ of error. *Dahnke-Walker Milling Co.* v. *Bondurant*, U. S. Sup. Ct., Oct. Term, 1921, No. 30.

A decision involving an official's authority may determine its validity or may determine simply its nature or extent. See *United States* v. *Lynch*, 137 U. S. 280, 285; *South Carolina* v. *Seymour*, 153 U. S. 353, 360; *Champion Lumber Co.* v. *Fisher*, 227 U. S. 445, 451–452. *Cf. Ireland* v. *Woods*, 246 U. S. 323, 328–330. Congress, in amending § 237 of the Judicial Code, providing for review by the Supreme Court on constitutional grounds, evidently had in mind some such classification of state decisions upholding the application of state statutes. See 33 HARV. L. REV. 102. But cases involving the constitutionality of a state statute cannot be so classified. In passing on the constitutionality of a state statute the Supreme Court is bound to accept the construction put upon it by the state court. The validity of a statute is therefore "drawn in question" whenever the state court has in effect, consciously or unconsciously, upheld the statute as applied to the facts in the case. See *Bridge Proprietors* v. *Hoboken Co.*, 1 Wall. (U. S.) 116, 144–145; *McCullough* v. *Virginia*, 172 U. S. 102, 116–117; *Kenney* v. *Supreme Lodge*, 252 U. S. 411, 416. For a court to declare a statute unconstitutional means simply that if the statute be applied to this particular state of facts, it will operate in such a way as to contravene the terms of the Constitution; therefore in this case the court must disregard the statute. It results inevitably that whenever a state statute is applied to a new set of facts, it may be unconstitutional as applied to those facts, no matter how many times theretofore it has been declared valid. See *General Oil Co.* v. *Crain*, 209 U. S. 211, 227–228; *International Text Book Co.* v. *Pigg*, 217 U. S. 91; *New Orleans & Northeastern R. R. Co.* v. *Scarlet*, 249 U. S. 528. The conclusion of the majority seems unescapable. See p. 2, opinion of the court *per* Holmes, J., *Eureka Pipe Line Co.* v. *Hallanan*, U. S. Sup. Ct., Oct. Term, 1921, No. 255. But see *Philadelphia & Reading Coal and Iron Co.* v. *Gilbert*, 245 U. S. 162; *Dana* v. *Dana*, 250 U. S. 220. And *cf. Clayton* v. *Utah Territory*, 132 U. S. 632, 638; *McLean* v. *Denver & Rio Grande R. R. Co.*, 203 U. S. 38, 47–48.

INTERNATIONAL LAW — RETROACTIVE EFFECT OF RECOGNITION OF FOREIGN GOVERNMENTS. — In 1917 the Soviet Government supplanted the Provisional Government in Russia. In 1918, the Soviet authorities condemned certain personal property belonging to the plaintiffs, who were Russian citizens. A Soviet emissary sold the property to the defendants in England. In 1921 the English Foreign Office recognized the Soviet Government as the *de facto* government of Russia. *Held*, that this recognition related back to validate the seizure. *Aksionairnoye etc. A. M. Luther* v. *Sagor & Co.*, [1921] 3 K. B. 532 (C. A.).

For a discussion of the principles involved, see NOTES, *supra*, p. 606.